set out in clause 7 of the will because (1) the probate and copy of the will were served upon them and that gave them notice of the contents of the will, and (2) the 2nd and 4th executors and trustees who when executing the transfer signed as trustees and not as executors.

With regard to (1) the matter is dealt with by Eve, J. in the judgment in *Grundy v. Briggs*[5], where at p. 449 he says :—

"In my opinion it would be a most dangerous thing to hold that a company, to whom the probate is produced for the purpose of establishing who are the legal personal representatives of the deceased shareholder, are thereby affected with notice, express or otherwise, of the other contents of the testator's will. I think, therefore, that the notice which the company had from the probate was limited to a notice of the names and addresses of the persons who had constituted themselves the legal personal representatives of the testator."

And in *Simpson v. Molson's Bank*[6] Lord Shand at p. 281 says :—

"The production of the will or probate at that time would be in accordance with the usual practice, which entitles the bank to require evidence by production of the title in virtue of which the entry of any transfer of shares in the bank's books is asked. But the only question with which the bank were concerned was that of legal title. They had to satisfy themselves only that the will gave a right to the shares which entitled the executors to be registered as owners. They were not called upon, on an application to enter a transfer by transmission of the bank's shares, to examine the will with reference to an entirely different matter which did not concern them, namely, the testator's directions as to the ultimate destination and disposal of his estate; and there is no reason to suppose that anything more was done on this occasion than is usual in such cases."

And with regard to (2), in *Mackereth v. Wigan Coal and Iron Co. Ltd.*[7] at p. 301 Peterson, J. says :—

"In several cases it has been stated in broad terms that a company 'need not take notice in any way of trusts': per Brett, M.R. in **Societe Generale de Paris v. Tramways Union Company**[8]; or that any notice is absolutely imperative to affect a company with any notice: per Lord Selborne in the same case in the House of Lord — **Societe Generale de Paris v. Walker**[9]. These observations had, however, reference to the obligation of the company to register transfers of shares."

Section 102 of the Companies Ordinance No. 49 of 1940 states :—

"No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the Registrar."

I have therefore come to the conclusion that the defendant Company were right in registering the transfer which was properly executed according to the Articles of Association of the defendant Company and I can find no evidence from which I can hold that the Company had notice of any trust relating to the shares in question.

The plaintiffs' claim is therefore dismissed with costs.

Claim dismissed.

N. P. SINNASAMY v. HUP AIK OMNIBUS CO.

[Court of Appeal (Pretheroe, Ag. C.J., Thomson and Briggs, JJ.) February 2, 1952]

[F.M. — Civil Appeal No. 34 of 1951]

Company — Registration of shareholder — Illegal reduction of capital — Dividends.

Where a declaration is made that a claimant is entitled to be registered as the owner of shares in a company it is not permissible to order that the company either register the claimant or refund to him the value of the shares; the latter course would have involved the company in an illegal reduction of capital. On registration the claimant would be entitled to draw dividends declared and payable after the date of purchase.

COURT OF APPEAL.

M. Edgar and *M. S. Mahendran* for the appellant.

H. T. Ong for the respondent.

The facts appear sufficiently from the judgment of Briggs, J.

Cur. Adv. Vult.

Briggs, J. : — In this case the plaintiff prayed as against one Ramiah a declaration that he had bought from one Rayan deceased, whose administrator Ramiah was, 200 shares in the respondent Company. The Court found in the plaintiff's favour and duly made the declaration, against which there is no appeal. The plaintiff also sought as against the respondent Company an order that he be registered as owner of the said 200 shares. On this part of the claim the Court made an order in the following terms :—

"AND THIS COURT DOTH FURTHER ORDER that the second defendant Company do either register the said 200 shares in the name of the plaintiff or refund to the plaintiff the sum of $200 and that in the event of the second defendant Company refunding the plaintiff the said sum of $200 the first defendant do refund the plaintiff a further sum of $200."

The second course, of the two which the Company was thus in terms permitted to adopt, was in practice impossible, in that it would have involved the Company in an illegal reduction of capital and the consequences, including commission of penal offences, which would have flowed therefrom. The plaintiff appealed and asked that the Company be ordered to place him on the register. The Company did not at first cross-appeal; but when it was pointed out by the Court that the permission to refund the nominal value of the shares in cash was merely illusory and that in fact, under the Order made, it would be obliged to register the plaintiff, its Counsel applied for leave to cross-appeal out of time. Such a cross-appeal would have raised issues of fact which were never dealt with in the Court below, and we refused leave. The Company is

therefore obliged to register the plaintiff as owner of the shares, but the above paragraph of the Order of the Court below must be varied to read

.....ordered that the second defendant Company do register the said 200 shares in the name of the plaintiff.

The plaintiff had also asked for an order for payment of the dividends declared by the Company as payable after the date of his purchase of the shares. This claim the learned trial Judge rejected. It was common ground that the plaintiff as beneficial owner must in any event be entitled to these dividends, whether directly or through Ramiah as his trustee. As he is to be registered as a shareholder there is now no objection to his receiving them directly. The paragraph of the Order referring to the dividends should therefore be varied so as to read,

"AND THIS COURT DOTH FURTHER ORDER that the second defendant Company do pay to the plaintiff the amount of all dividends declared by it as payable on or after the 25th day of September 1942 and due in respect of the said 200 shares, in lieu of paying the amount of the same to the first defendant."

As regards costs, the order of the Court below will stand, and the respondent Company must pay to the appellant his costs of this appeal. The appeal should be allowed and judgment entered accordingly.

Pretheroe, Ag. C.J. : — I have had the advantage of reading the judgment of Briggs, J. in this appeal. I agree with the decision at which he has arrived, and have nothing to add thereto. The Order of the Court regarding costs will be that proposed by Briggs, J.

Thomson, J. : — I have had the advantage of reading the Judgment to be delivered by my brother Briggs. I agree with what he says, and I agree that the Order of the Court below should be varied as proposed by him.

I would add that although this is in form an appeal, in substance it is merely a proceeding to rectify the effects of an oversight by all parties in the Court below.

Appeal allowed.

HAJI OSMAN BIN ABU BAKAR v. SAIYED NOOR BIN SAIYED MOHAMED.

[Court of Appeal (Pretheroe, Ag. C.J., Thomson and and Briggs, JJ.) February 2, 1952]

[F.M. — Civil Appeal No. 42 of 1951]

Land — Sale of land — Death of transferor before registration — Land Code, ss. 85(ii) and 155 — Specific performance —Probate Enactment, s. 95(iii).

X for a valuable consideration, executed a transfer of land; the transfer and the document of title to the land were handed to the purchaser. Before the transfer was presented for registration X died and registration was refused under section 85(ii) of the Land Code. A claim for specific performance was refused; the Court of Appeal allowing,

Held, the death of the proprietor — transferor of land did not avoid contract; the legal personal representative of such deceased person was trustee for the purchaser who, subject to the terms of the contract and in the absence of fraud, misrepresentation or mistake, was entitled to the land and to possession.

Held, per Thomson, J., the intention of section 85(ii) of the Land Code is to protect the estate of a deceased person against fraud rather than against fulfilling the lawful and binding obligations of the deceased.

Cases referred to :—

(1) *Loke Yew v. Port Swettenham Rubber Co. Ltd.* (1913) A.C. 491.

(2) *In re T. A. S. Sanmugam Pillay decd.* (1951) M.L.J. 81.

COURT OF APPEAL, setting aside the decision of Hastings, J. reported in (1951) M.L.J. 129.

J. D. M. Donnelly for the appellant.

K. C. Chan for the respondent.

The facts are fully set in the judgment of Hastings, J. in (1951) M.L.J. 129; the arguments appear sufficiently from the judgments *infra.*

Cur: Adv. Vult.

Pretheroe, Ag. C.J. : — In this appeal I have had the advantage of reading the judgments prepared by Thomson and Briggs, JJ. I am in complete agreement with both those judgments but as we are differing from the learned trial Judge and an important point of law is involved I will briefly set out my own views.

In the course of a long and carefully prepared judgment the learned trial Judge gave his reasons for arriving at the decision that when a proprietor enters into a contract to sell land but dies before presentation of the transfer document for registration "the contract" comes "to an end" and the transferee becomes "entitled to recover the money he had paid as on a failure of consideration." With respect I do not agree with this interpretation of sub-section (ii) of section 85 of the Land Code. In my opinion, in the circumstances described, the effect of the sub-section is not to avoid the contract but merely to alter the normal procedure of registration. Section 155 of the Code provides, *inter alia*, that whenever a proprietor dies the proper registering authority shall not register any dealing with the deceased's land "*until* the representative of such proprietor shall have presented a written application to be registered as proprietor." The section then proceeds to describe how the registration shall be effected. As the title registered in the name of the representative is precisely the same as that held by the